



**FOLEY
HOAG LLP**
ATTORNEYS AT LAW

October 4, 2004

Mary Beth Gentleman
Boston Office
617-832-1199
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Via E-mail

By Hand

Ms. Mary L. Cottrell
Secretary
Commonwealth of Massachusetts
Department of Telecommunications & Energy
One South Station
Boston, MA 02110

Re: Petition of Boston Edison Company and Commonwealth Electric
Company for Approvals Relating to the Issuance of Rate Reduction
Bonds Pursuant to G.L. c. 164, § 1H, D.T.E. 04-70

Dear Ms. Cottrell:

On behalf of Dartmouth Power Associates Limited Partnership, I enclose for filing in the above-referenced docket one original and five (5) copies of the Petition for Leave to Intervene of Dartmouth Power Associates Limited Partnership. A copy will also be filed electronically.

Kindly date stamp the enclosed copy of this letter, and return same to our messenger.

Thank you for your attention to this matter.

Sincerely yours,

Mary Beth Gentleman

MBG:jrd

Enclosure

cc: Joan Foster Evans, Hearing Officer
Colleen McConnell, Esquire
Robert N. Werlin, Esquire
John K. Habib, Esquire
Robert Powell, Vice President and Counsel

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

D.T.E. 04-70

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon all persons below in accordance with the requirements of 220 C.M.R. § 1.03(1) and the procedural rules in this docket.

Dated at Boston this 4th day of October, 2004.



Mary Beth Gentleman
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155 Seaport Boulevard
Boston, MA 02210
(617) 832-1199

Mary L. Cottrell, Secretary
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Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Petition of Boston Edison Company and Commonwealth Electric Company for Approvals Relating to the Issuance of Rate Reduction Bonds Pursuant to G.L. c. 164, § 1H))))))	D.T.E. 04-70
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Dartmouth Power Associates Limited Partnership (“Dartmouth Power”) hereby submits to the Department of Telecommunications and Energy (the “DTE”) a petition for leave to intervene as a full party in the above-captioned proceeding (the “Petition”), pursuant to 220 C.M.R. 1.03(1). In support of its Petition, Dartmouth Power states as follows:

1. Dartmouth Power is a Massachusetts limited partnership having its principal place of business at 1 Energy Road, Dartmouth, MA 02747.
2. Dartmouth Power operates a 68 megawatt gas-fired generating facility in Dartmouth, Massachusetts (the “Facility”).
3. Dartmouth Power and Commonwealth Electric Company (“Commonwealth”) are parties to a Power Purchase Agreement, dated as of September 5, 1989 (and subsequently amended on August 3, 1990, June 23, 1994, April 25, 1995 and October 15, 2002) (together, the “Dartmouth Power PPA”), pursuant to which Dartmouth Power sells to Commonwealth, and Commonwealth purchases from Dartmouth Power, electric energy products produced by the Facility.

4. As a result of an auction by Boston Edison Company, Cambridge Electric Light Company and Commonwealth (d/b/a NSTAR Electric) of their PPA entitlements, including the Dartmouth Power PPA, the Dartmouth Power PPA will be assigned to an affiliate of Dartmouth Power, Dartmouth PPA Holdings LLC (“Dartmouth Holdings”), a Delaware limited liability company having its principal place of business at 2929 Allen Parkway, Suite 2200, Houston, Texas. The assignment will take place under the terms and conditions of a Purchase and Sale Agreement, which Dartmouth Holdings and Commonwealth executed on August 18, 2004 (the “Purchase and Sale Agreement”).

5. Under the Purchase and Sale Agreement, the Dartmouth Power PPA will be assigned to Dartmouth Holdings on the date on which certain conditions specified in the Purchase and Sale Agreement have been met. *See* Purchase and Sale Agreement, Article 4. In consideration for the assignment of Commonwealth’s obligations under the Dartmouth Power PPA, Commonwealth will pay Dartmouth Holdings the Purchase Price as defined in Article 3.1 of the Purchase and Sale Agreement.

6. On August 27, 2004, Commonwealth petitioned the DTE pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94 and 94A for approval of the Purchase and Sale Agreement and of the ratemaking treatment relating thereto (the “NSTAR Petition”). The NSTAR Petition is pending in docket D.T.E. 04-78.

7. On August 31, 2004, Boston Edison Company, Cambridge Electric Light Company and Commonwealth (the “Companies”) petitioned the DTE pursuant to G.L. c. 164, § 1H for approvals relating to issuance of rate reduction bonds (“RRB Petition”). In their RRB Petition, the Companies requested approval of “Financing Orders” approving, *inter alia*, “the securitization (as such term is used in G.L. c. 164, §§ 1G and 1H) through RRBs of

reimbursable transition costs amounts of approximately \$675 million consisting of payments associated with the termination of obligations under certain power purchase agreements (the PPAs) between . . . Commonwealth and Dartmouth Power Associates, L.P. . . .” RRB Petition at 1.

8. On September 20, 2004, the DTE issued a Notice of Public Hearing and Procedural Conference with respect to the RRB Petition, requiring persons seeking to intervene to file a petition in writing no later than Monday, October 4, 2004.

9. Pursuant to G.L. c. 30A, § 10, the DTE may “allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose as the [DTE] may order.” *See also* 220 CMR 1.03(1)(b).

10. Dartmouth Power seeks to intervene in this proceeding because the DTE’s determination and findings in this proceeding will have a direct bearing on Dartmouth Power. Dartmouth Power is a party to Dartmouth Power PPA which is being assigned under the Purchase and Sale Agreement. Implementation of the transaction contemplated under the Purchase and Sale Agreement is contingent upon receipt of regulatory approvals by various governmental agencies, including the DTE. *See* Purchase and Sale Agreement, Article 4.2 (a) and (b) and 4.3 (a) and (b). The Purchase and Sale Agreement “is conditioned, in part, on the issuance by the Department of Financing Orders authorizing the securitization of the associated costs.” *Boston Edison*, D.T.E. 04-70, Letter to Secretary Cottrell, dated August 31, 2004, at 1-2. *See also* RRB Petition at 3; Purchase and Sale Agreement, Article 4.2(b) and 4.3(a). Without Department approval of the Financing Orders, the Dartmouth Power PPA will not be assigned to

Dartmouth Power's affiliate as contemplated in the Purchase and Sale Agreement. Dartmouth Power is thus substantially and specifically affected by the outcome of this proceeding.

11. No other party can adequately represent Dartmouth Power's interest, as Dartmouth Power's legal rights and duties are affected. Moreover, no other party can represent Dartmouth Power's interest as a party to the Dartmouth Power PPA and the Purchase and Sale Agreement.

12. DTE precedent supports the intervention of contracting parties in proceedings affecting their contracts or agreements. *See e.g., Boston Edison Co./Commonwealth Electric Co.*, D.T.E. 98-119-126 (1998), at 1 (permitting the Entergy Nuclear Generation Company to intervene in the DTE's review of a Power Purchase Agreement between Boston Edison Company and Entergy); *Canal Electric Co.*, D.T.E. 02-34 (2002), at 1 (permitting FPL Energy Seabrook to intervene in the DTE's review of a purchase and sale agreement between FPL Energy Seabrook and Canal); *Commonwealth Electric Co./Cambridge Electric Light Company*, D.T.E. 04-60 (2004), at 1; *Boston Edison Co. and Commonwealth Electric Co.*, D.T.E. 04-61, Hearing Officer Ruling on Petition to Intervene and Amended Petition for Limited Participant Status, September 30, 2004, at 1.

13. Dartmouth Power seeks all the rights of a full party, including the right to file discovery, question witnesses, present testimony and submit briefs.

14. The Companies have no objection to Dartmouth Power obtaining full intervenor status in this proceeding.

15. Dartmouth Power requests that all notices, testimony, pleadings and correspondence pertaining to this proceeding be directed to:

Mary Beth Gentleman
Andrew D. Fagenholz
Foley Hoag LLP
World Trade Center West
155 Seaport Boulevard
Boston, MA 02210

WHEREFORE, Dartmouth Power respectfully requests that the DTE grant its Petition for Leave to Intervene in this proceeding.

Respectfully submitted,

**DARTMOUTH POWER ASSOCIATES
LIMITED PARTNERSHIP**

By its attorneys,

A handwritten signature in cursive script, appearing to read "Mary Beth Gentleman", is written over a horizontal line.

Mary Beth Gentleman
Andrew D. Fagenholz
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155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000
mgentleman@foleyhoag.com

Dated: October 4, 2004